

1895-034 Chancery Causes: William J. Hutton Jr to vs. E. A. Speak
Lee Co.

Chancery

CA-Contract Dispute
T-Property

Commonwealth of Virginia:

In the Circuit Court of Lee County:

At 1st October Rules, 1894.

Humbly complaining, sheweth unto your Honor, your orator, Wm. J. Hutton who sues for the benefit of H. M. Chance, That your orator sometime before the year 1892, was seized of or entitled to a good fee simple estate in and to certain land lying in the County of Lee; and your orator being so seized or entitled, and being desirous to sell the same, did contract with one E. A. Speak, some time in the year 1892 for the sale of the said land to him; at which time the said E. A. Speak did agree to purchase the said land of your orator, at the price of \$, and executed his ~~bond~~ to your orator as part of the purchase price of said land for the sum of \$110⁰⁰, which bond bears date on the 22nd day of October, 1892, and is due "Twelve months after date," without interest till due, from which time it bears interest, which bond is here filed marked "Chance" and is prayed to be taken and considered as a part of this bill.

Your orator, on the 25th day of March, 1893, assigned said note to H. M. Chance for whom benefit he brings this suit.

Your orator further sheweth unto your Honor that at or about the time that said bond was executed, he executed to the said E. A. Speak a good and sufficient deed for said land and placed him in the possession of said deed and said land. But, the said Speak has not had said deed recorded, but your orator charges that said deed remains

(Or should do so as that was the contract -)

2/
 ## Said land contains about 25 acres, and is bounded by Hardis' Creek, the said Wilson and Matlock land, & is about 1/2 mile South of Graybill's Mill in Lin Co. Va.

Prayer

a Vendor's equitable lien, which fact the said Speak admits in his deposition on file in a Chancery Cause now pending in this Court of Martha J. Hutton against your orator and others to which deposition reference is here made.

Your orator further charges that said bond is all due and unpaid and that the same belongs to H. M. Chance, and that the said E. A. Speak has failed and refused to pay the same to any proper person and that he has thus failed to comply with his Contract; which is contrary to equity and good conscience. ##

In tender consideration whereof, and forasmuch as your orator is remediless in the premises, save by the aid of a Court of equity, where matters of this kind are alone cognizable, your orator prays that the said E. A. Speak may be made a party defendant to this bill, and that he answer the same but not upon oath that being specially waived; that the said E. A. Speak be required to file said due in this suit and that he be required to perform his Contract specifically; that said Vendor's lien be enforced; and that the said E. A. Speak may be compelled to pay to H. M. Chance the amount of purchase money of said land, together with the interest thereon and the costs of this suit; that proper process may issue, and that your orator may have such other further and general relief as the nature of his case may require, or to equity shall seem meet.

#110 $\frac{98}{100}$ Twelve Months after date
I promise to pay J^m. J. Hutton
One hundred and ten dollars
It being for Purchas. Money on
land. Value. received of him and
I here by name my home st^d
exemption as to this debt witness
my hand and seal. This 22nd of
Oct 1892 E. J. Speak Seal

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91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

J. B. LIPPINCOTT COMPANY,
Booksellers and Stationers,
Philadelphia, Pa.

And your orator will ever pray, &c.
Orr, Ely & Orr,
Sole.

March Term

Wm J. Hutton for VC

C 5.01
S 50
atly 15.00
Estimate 5.00
\$25.51

vs } Bill in Chy.

E. A. Speak

Bond Filed.

1894 1st October Rules bill
filed Sums Executed
and Decrees nisi
" 2nd October Rules Decree
nisi confirmed and
cause set for hearing
by Plff.

P.C. 3.71
S 1.80
atly 15.00
S 50

Estimate 5.00
\$25.71

Pinn - \$80.00
Ind. 6.80
cost 25.71
Gr - 11 87
15.51
42
33.51
86.80
5
434.00

86.80
434
8246
25
57.46
33.51
23195

Orn. Ely & DTR
451 & 452 & 453
S. 9000000 434

To the Hon.W.T.Miller, Judge of the Circuit court Lee county, &
The demurrer and answer of E.A.SPEAK to a bill in Chancery
exhibited in this Honorable court by William J.Hutton who
sues for the benefit of H.M.Chance. Respondent say that plain-
tiff's bill is not sufficient in law, and he demurs accord-
ingly. But should other and further answer be required of
him answering he says: It is true that he purchased from
William J.Hutton the land in the bill mentioned at the price
of \$160.00, and that he paid down \$50.00, and that he exe-
cuted the note exhibited with the plaintiff's bill for
\$110.00, the residue thereof.. The said trade was made Oct.
22, 1892, the date of the said note, and said Hutton then exe-
cuted and delivered to your respondent his bond, binding
himself upon the payment of the balance of the purchase
money to make to your respondent a good and sufficient
deed for said land, with covenants of general warranty.
Afterwards and about the day of February, 1893, said Hut-
ton delivered to respondent what he represented to be a
good and proper deed for said land, and your respondent took
the same not knowing but that it was a good and sufficient
deed for said land. But respondent has been advised and
therefore alleges that said deed is not a good or proper
deed of conveyance for the said land, because, among other
defects, the same is not under seal, and therefore does not
convey said land. And respondent is further advised and
therefore alleges that no lien is retained on the said land in
the said paper for the purchase price of the said land,
and that said complainant has no right to enforce the col-
lection of said purchase money against said land until
he has made, executed and delivered to respondent, or filed
in this suit, a good and sufficient deed to the said land from
himself and wife, with covenants of general warranty. And
when this is done your respondent is ready willing and anxious
and has been for some time, to pay the balance of the said
purchase money. The said paper is herewith filed as part
hereof marked "Deed".

It is true that respondent in a deposition taken as in the bill stated, did state that a vendor's lien was retained in the said writing against the said land for the payment of the balance purchase money, and at the time he thought that that was correct, but as he is a country farmer and not acquainted with legal forms and law, being by no means a lawyer, he does not and did at that time not know what it took to constitute such lien, but he is now advised and so alleges that no lien is or was retained, and also that as he has stated, he has ~~has~~ no deed for the said land.

And now having answered as fully as he is advised it is material that he should answer, he prays to be hence dismissed with his reasonable costs, &c. And he will ever pray, &c.

Orn. Blankenship Canning
P.D.

Wm. J. Hutton, for, &c.

vs. } Ans.

E. L. Speak -

Filed in open Court.

Nov 15th 1894

A. B. Munsey Clerk

Wm J. Hutton for etc,

vs. ~~the~~ Decree in chancery

E. A. Spear

This cause came ~~on~~ this day to be heard upon the papers
formerly received in the cause and was argued by
counsel. And it being admitted in open court that
since the last term of this Court the defendant
has paid in full the amt of the decree received in
this ^{cause} at last term of the court, with costs, and
nothing further remaining to be done, it is ordered
by the court that the cause be stricken from
the docket,

Wm J. Hutton Forest
no ~~EE~~ description
E. A. Speck

Enter this

M. L. M.

June 7th. 1898

Wm J Hutton for M. Chance Plff
against
E. A. Speak Defd } In Chancery.

This cause came on again to be heard upon the papers formerly read in the cause, and the deed of said Wm J Hutton to the defendant for the land in the bill mentioned, filed since the last term of the Court, and the exceptions of the defendant ^{to said deed} endorsed thereon, and was argued by counsel. On consideration thereof, it is adjudged, ordered and decreed, that the said exceptions ^{to said deed} are sustained as to Martha Hutton, and that the defendant is entitled to an abatement of the purchase money in the said bill mentioned, on account of the contingent right of dower of ^{said} Martha Hutton, the wife of Wm J Hutton, in the land in the bill and said deed mentioned to the extent of thirty dollars, as of the 22nd day of October 1893, ^{and the clerk being willing to accept said plea with said abatement} and that the plaintiff recover against the defendant the sum of \$110.00 the amount of the note sued on with interest thereon from the 22nd day of October 1893 until paid subject to a credit ^{of said sum} of \$30.00 as of the said 22nd day of October 1893, ^{until paid} and costs of this suit.

And unless the amount of this decree is paid within 30 days from the adjournment of this Court, then M. G. Ely who is appointed a Commissioner

for the purpose, will proceed at the front door
of the Court house of this County, on some Court
day, to sell to the highest bidder, on a credit of
six and twelve months time, the land in the
bill mentioned, or so much thereof as may
be necessary to pay the amount of this decree
and the expense of sale, which ^{costs} expense of sale
he will require to be paid in hand, and for the
deferred payments bonds with security will be
required of the purchaser bearing interest from
date. Said Commissioner before selling will advertise
the time, place and terms of sale for at least 30
days by written advertisements posted at the
front door of the Court house of this County
and in the vicinity of said land and will execute
bond before the Clerk of this Court in the sum
of \$200.00. Conditioned according to law. He will
report his action hereunder to some future term of this Court.
And the Cause is Continued.

Wm J. Lutton for &c

vs Decree

E. A. Speak.

O.B.

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Enter this

M J M

March 12th 1895

Wm J. Hutton for & Co }
 vs } Decm
 E. A. Speck

This Cause came on this day to be heard upon the bill and exhibits filed therewith, the answer of E. A. Speck and the exhibits filed therewith, and was argued by Counsel. Upon consideration of which the Court is of opinion that the deed filed with the defendants answer is not a deed and therefore orders and decrees that the plaintiff do execute to the defendant a deed pursuant to the Contract, and the Cause is continued.

and the nonresidence being suggested
 security for costs is suggested

plaintiff is not a resident of this
 State & that security for
 costs is required of him

Wm J. Hutton of mte
vs J. L. L. L.

E. A. Speake

Entered in Chy

Q. B.

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Enter

W. J. M.

11/16/94.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee---Greeting:

WE COMMAND YOU, That you summon

E. A. Speak

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said

Court on the *1st* Monday in *October*, 189*4*, to answer a bill in Chancery,

exhibited against *him* in our said court by *Wm J. Sutton* who

Sues for the benefit of H. M. Lechance

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the

7th day of *September* 189*4*, and in the *119th* year of the

Commonwealth.

A B Munsey Clerk.

18.00
5.00
1.00
24.00

Wm J. Hutton for &c

vs. { SUPREMA
IN CHANCERY.

E. A. Speak

Orr, Ely & Orr p. q.

To 1st October Rules,
Circuit Court.

38.60
24.00
9.60

Executed by delivering
a true copy of within
summons to E. A. Speak
this Sept ~~18~~ 18-1894
J. M. Weston bond. for
C. E. Flanary S. L. C.